

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	MEMPHIS CATV)	
	(Time Warner Entertainment, LP))	
	Various Personalty Accounts, Ex. A)	Shelby
	Commercial Property)	County
	Tax Years 1999-2000)	

FINAL DECISION AND ORDER ON RECONSIDERATION

Statement of the case

These are proceedings on reconsideration of the Commission final decision and order dated August 17, 2006, limited to review of the record. The taxable values and assessments before the Commission are as stated in Exhibit A. The proceedings on reconsideration were convened on February 13, 2007 before Commission members Stokes (presiding), Brooks, Gilliam, and Wade.¹ Time Warner was represented by counsel, Mr. John Farris and Mr. Paul Peel, and the assessor was represented by Assistant County Attorney Thomas Williams.

Findings of fact and conclusions of law

Tangible personal property of local businesses is assessed annually in Tennessee by the county assessors of property using information provided in a taxpayer return. The presumed fair market value of this property is its cost to the taxpayer depreciated according to statutory useful lives. Tenn. Code Ann. §67-5-902—903. Tennessee law permits taxpayers or assessors to assert an alternative to standard depreciated cost that more closely reflects fair market value, known as non-standard value, but the proponent bears the burden of documenting and proving non-standard value.

Memphis CATV division of Time Warner provides cable television and other services to subscribers in the Memphis area, utilizing a signal distribution network that partly utilizes existing utility infrastructure to the point of the "drop" from whence service is delivered to a particular subscriber. The company also maintains storage facilities for equipment that is retired or held for use. The company duly filed its tangible personal property reports for 1999 and 2000 with the assumption that settlements or agreements entered for prior years' assessments would continue to apply. For example, the company omitted converter boxes on

¹ Mr. Gilliam and Mr. Wade sat as designated alternates for absent members, pursuant to Tenn. Code Ann. §4-5-302, but each participated as well when the matter was previously heard.

subscriber premises or held in its warehouses. The assessor audited the accounts in 2000 and revised the assessments for 1999 and 2000 based partly on her conclusion that the law required the converter boxes to be assessed to the company, and partly on cost information obtained from the company's books.

Memphis CATV officials testified to the administrative judge and to the Commission that had they known the assessor was going to reject their personalty filings they would have claimed nonstandard value for their equipment, or at the very least they would have cleared from their books certain retired equipment that was no longer in service or indeed may have been scrapped or sold. The company sought to prove non-standard value by the testimony of Charles Jerominski, an engineer and appraiser who estimated replacement cost based on his discussions with plant engineers regarding the current cost per drop. There was no other documentation of the source of this information. Mr. Jerominski estimated depreciation using university studies ("Iowa survivor curves") with which he was familiar from previous appraisal assignments.

An additional company witness, Senior Tax Director Jim Golly, testified that apart from the drops, the auditor's estimate of cost was overstated because it included certain capitalized expenses, capitalized interest, pre-engineering costs, and pole make-ready costs which were intangibles and not, in his opinion, properly part of the value of the tangible property. The administrative judge rejected this contention, and we agree. Both rules of the Board (0600-5-.01 (6)) and an authoritative appraisal source cited by the judge (American Society of Appraisers) require capitalized indirect costs to be included in the cost approach to value.

On the remaining issues, the Commission's findings and conclusions are stated below.

Standard cost and unrecorded retirements. The assessor utilized information provided by the taxpayer to construct her estimate of the standard cost of the tangible personal property at issue. Mr. Jerominski and Mr. Golly stated that part of the difference in the auditor's cost and the company's replacement cost owed to unrecorded retirements that remained on the company's books notwithstanding the related equipment was no longer in place. The taxpayer disputes the assessor's value on the basis the cost information in its own files was in error, but the taxpayer has not offered an alternative. In the absence of a credible alternative,

the Commission finds and concludes that the standard value of the subject tangible personal property based on cost is the value asserted by the assessor from the assessor audit of company books.

Nonstandard value. The Commission finds and concludes that the testimony offered in support of a nonstandard value is insufficient to overcome the presumption in favor of depreciated acquisition cost. Absent the testimony of the sources to whom Mr. Jerominski referred or documentation of cost estimates by those sources, we have no means to examine whether the replacement cost estimates were reasonable. Likewise, while appraisers may generally utilize the Iowa studies in estimating depreciation, we have no specific information to document applicability of that methodology to the property at issue here. Lacking proper documentation, the unrebutted acquisition cost less statutory depreciation, must stand.

ORDER

By reason of the foregoing, it is ORDERED, that the initial decision and order of the administrative judge is affirmed in all respects, including of course the treatment of converter box and related equipment as nonassessable leased property or rental inventory as determined by the State Board of Equalization. The property shall be valued and assessed as stated in Exhibit A.

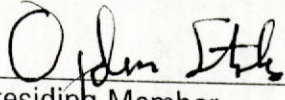
This order is subject to:

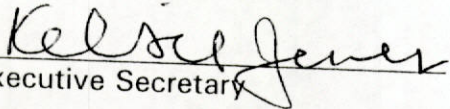
1. Reconsideration by the Commission, in the Commission's discretion.
Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other county as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

Dated: July 25, 2007

ATTEST:


Presiding Member


Executive Secretary

cc: Mr. John Farris, Esq.
Ms. Rita Clark, Assessor
Mr. Thomas Williams, Esq.

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LISTING OF ACCOUNTS

<u>Account No.</u>	<u>Tax Year</u>	<u>Appraisal</u>	<u>Assessment</u>
015730	1999	\$46,614,700	\$13,984,410
015730	2000	\$39,412,100	\$11,823,630
058000	1999	\$126,500	\$37,950
058000	2000	\$105,500	\$31,650
058001	1999	\$131,600	\$39,480
058001	2000	\$110,300	\$33,090
058156	2000	\$4,818,400	\$1,445,520
064942	1999	\$10,033,800	\$3,010,140
064942	2000	\$8,663,300	\$2,598,990
071695	1999	\$138,400	\$41,520
071695	2000	\$115,200	\$34,560
073176	2000	\$5,815,800	\$1,744,740
101526	2000	\$696,100	\$208,830
101527	2000	\$2,276,800	\$683,040
147993	2000	\$45,000	\$13,500
148061	2000	\$1,559,300	\$467,790

EXHIBIT A